HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.953 of 2005

1. Subhash Chand Chawla
   S/o Amar Nath Chawla
2. Krishna Devi W/o Subhash Chand Chawla
3. Pawan Chawla S/o Subhash Chand Chawla
4. Himanshu @ Ranjit Chawla
   S/o Subhash Chand Chawla
   All R/o 131 Mohalla Bhatti
   Kasba & P.S. Bilaspur
   District Rampur, U.P. .....Applicants

Versus

1. State of Uttaranchal
2. C.J.M. Haridwar, District Haridwar
3. Neeru Chawla W/o Himanshu @ Ranjit Chawla
   D/o Ashok Kumar Chawla
   R/o Ganga Ashram Bhola Giri
   P.S. Kotwali Haridwar
   District Haridwar .....Respondents

Sri Parikshit Saini learned counsel for the applicants.
Sri Pankaj Miglani learned counsel for the respondent No.3.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the chargesheet submitted by the I.O. in case crime No.606/2005 and order dated 24.10.2005 passed by Chief Judicial Magistrate, Haridwar in criminal case No.5666/2005 State Vs. Himanshu Chawla & others under sections 498-A IPC and 3/4 Dowry Prohibition Act.

2. Brief facts of the case are that the respondent No.3 lodged an FIR alleging therein that the marriage was solemnized between the applicant No.4-Himanshu and respondent No.3-Neeru on 17.04.2001 according to Hindu rites and customs. Out of their wedlock, one child was born. It was further alleged that the respondent No.3 was subjected to ill-treatment and harassment by the applicants in connection with dowry demands.

Thereafter, the respondent No.3 left her matrimonial house and lodged an FIR. The police investigated the matter and submitted the chargesheet. The learned Magistrate took cognizance against the applicants vide order dated 24.10.2005. Feeling aggrieved by this, the applicants preferred the present petition.

3. Learned counsel for the applicants contended that the learned Magistrate has passed the cognizance order without applying the judicial mind and as such the order passed by the magistrate is arbitrary and mechanical. It was further contended that the respondent No.3 left her matrimonial house in the month of March 2003 and the FIR was lodged in the month of August 2003. It was further contended that the FIR was lodged after due consultation and it is an afterthought. Learned counsel for the respondent No.3 appeared before this court and filed counter affidavit. I have gone through the entire record. The chargesheet and the FIR clearly disclose the offence. The statement recorded under section 161 Cr.P.C. has not been filed in this petition. The respondent No.3 has filed the affidavit in which she has stated that the allegations had been proved against the applicants-accused. Perusal of the record reveals that the learned Magistrate has applied his judicial mind and the order is not mechanical. So far as the contention that the FIR was lodged after due consultation is concerned, it is a subject matter of evidence. This plea can be raised by the applicants during trial. The trial court can only evaluate the evidence of the applicants. Now, it is to be decided whether the version of the applicants is correct or the version of the respondent No.3 is correct. It is question of fact, which has to be decided during the trial. This court cannot evaluate the disputed facts of the case. This Court cannot decide as

to whether the evidence is reliable or not. It has been held by the Hon'ble Apex Court in M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822 that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151 that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

4. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. {State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.

5. In view of the above, the petition lacks merit and is dismissed. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J.C. S. Rawat, J.)

Dated 22.05.2006

LSR